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Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 WENHENG ZHAO,

18 Defendant.
19

No. CR 23-372-RGK

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT'S MOTION FOR
REDETERMINATION OF CUSTODY STATUS
PURSUANT TO 18 U.S.C. § 3142;
DECLARATION OF KATHRYNNE N. SEIDEN

20
21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California and Assistant United States Attorneys Annamartine Salick,
24 Christine M. Ro, and Kathrynne N. Seiden, hereby submits its
25 Memorandum of Points and Authorities in Opposition to Defendant's
26 Motion for Redetermination of Custody Status Pursuant to 18 U.S.C.
27 § 3142.
28

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1 This Opposition is based upon the files and records in this
2 case, the Declaration of Kathrynne N. Seiden attached hereto, and
3 such further evidence and argument as the Court may permit.

4 Dated: September 22, 2023

Respectfully submitted,

5 E. MARTIN ESTRADA
United States Attorney

6 CAMERON L. SCHROEDER
7 Assistant United States Attorney
8 Chief, National Security Division

9 /s/

10 ANNAMARTINE SALICK
CHRISTINE M. RO
11 KATHRYNNE N. SEIDEN
Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Until his arrest, defendant was an experienced, active-duty Navy servicemember who held a Secret-level security clearance and received numerous trainings on detecting and reporting suspicious foreign contacts. Nonetheless, for more than two years, defendant routinely used sophisticated, encrypted methods to pass controlled unclassified information to a Chinese intelligence officer ("IO") in exchange for, in defendant's words, "easy money." Having now been indicted for bribery, defendant asks this Court to accept his claim that he is a victim, trust him to comply with the conditions of pretrial release, and reverse the Magistrate Judge's ruling detaining him pending trial. The Court should decline the invitation to gamble matters of national security on the promise of someone who traded in that same security for personal profit. No condition or combination of conditions can reasonably assure the safety of the community or defendant's appearance as required, let alone both. Defendant's motion should be denied.

II. THE MAGISTRATE JUDGE DETAINS DEFENDANT PENDING TRIAL

Following a 1.5-hour-long hearing in front of the Honorable Patricia Donahue, the court ordered defendant detained pending trial on the basis that he poses both a significant risk of flight and a danger to the community. (Ex. A ("Hrg. Tr.") at 36-37.) With respect to risk of nonappearance, the court made clear that it had "given great consideration to the significant bond proposed by the defense," but observed that despite his family's "amply evidenced" financial support, defendant still "felt the need to obtain frequent payments over a course of an extensive period[.]" (Id. at 37.) Even if

1 defendant thought he was communicating with a stock investor, the
2 court found defendant's conduct nonetheless clearly violated the
3 "oath he took as an officer." (Id.) Defendant's "cavalier disregard"
4 for that oath gave the court little confidence that defendant would
5 abide by any conditions of release, even those secured by a
6 significant bond package. (Id. at 37-38.)

7 The court also found that that defendant poses a danger to the
8 community. (Id. at 38.) The court explained that even if defendant
9 did not know he was "surreptitiously and continuously transmitting"
10 this information to someone employed by the People's Republic of
11 China ("PRC"), the allegations suggested that defendant was
12 "nonetheless clearly willing" to violate his oath to the USN and send
13 non-public information that was "clearly labeled as not to be
14 disseminated to the public." (Id.) The court noted that such conduct
15 from a member of the military "endangers the national security" of
16 the U.S. (Id.)

17 **III. DEFENDANT SHOULD REMAIN DETAINED PENDING TRIAL**

18 On appeal of a magistrate court's detention ruling, a district
19 court "review[s] the evidence before the magistrate" and determines
20 "whether the magistrate's findings are correct." United States v.
21 Koenig, 912 F.2d 1190, 1192-93 (9th Cir. 1990). Although the district
22 court must make its "own independent determination," it is "not
23 required to start over . . . and proceed as if the magistrate's
24 decision and findings did not exist[.]" (Id.) Here, Judge Donahue's
25 order should remain in place because all four of the relevant factors
26 under 18 U.S.C. § 3142(g) reflect that no combination of conditions
27 will reasonably assure defendant's appearance at trial or, more
28 importantly, the safety of the community. See 18 U.S.C. § 3142(e).

1 First, the nature and circumstances of the offense charged weigh
2 in favor of detention. For nearly two years, defendant maintained an
3 active relationship with an IO from the PRC. Throughout the duration
4 of that relationship, defendant was an active duty servicemember who
5 received repeated and regular trainings on detecting and reporting
6 suspicious foreign contacts and the proper handling of controlled
7 information. Nevertheless, defendant consistently provided national
8 security information -- information that was marked controlled and
9 that defendant surreptitiously collected -- for "easy money." (Ex. B
10 ("Intvw. Tr.") at 96, 121.) In short, defendant's recklessness,
11 ongoing relationship with the IO, and willingness to betray his
12 country in exchange for a modest personal profit suffices as clear
13 and convincing evidence that defendant poses a danger to the national
14 security of the United States if released.

15 The Court cannot reasonably assure that stringent bond
16 conditions will prevent that danger. As defendant himself
17 acknowledges, his coconspirator is an agent of a "sophisticated,
18 international, government-sponsored espionage operation." (Mot. at
19 4.) Defendant communicated with that individual surreptitiously,
20 using encrypted internet-based methods. (Ind. ¶ 17.) In other words,
21 Pretrial Services does not have the capabilities to effectively
22 monitor defendant to ensure that he ceases the highly dangerous
23 conduct for which he is charged. And while the government has removed
24 defendant's access to new materials, it cannot prevent defendant from
25 disclosing sensitive information learned from his service or from
26 using sophisticated, technical means developed to avoid detection.

27 Moreover, defendant's claim that he is the unwitting "victim" of
28 a sophisticated foreign operative is belied by defendant's conduct

1 and admissions. In his post-arrest, Mirandized statement, defendant
2 conceded that he had received training on recognizing suspicious
3 contacts from people overseas. (Intvw. Tr. at 62-63, 99.) Defendant
4 further admitted that he knew the IO lived in China and that, even
5 early in the relationship, defendant found the IO's conduct to be
6 "fishy." (Id. at 17, 87, 96-97, 102, 122.) And when the IO asked him
7 for classified information, defendant admitted that he thought he
8 would look like a "spy" if he sent it. (Id. at 103.) Despite all
9 this, defendant did not report the IO or cease communication. Rather,
10 as defendant stated: "I mean, he's paying me so I was like, okay,
11 I'll just do whatever he says." (Id. at 32.) In other words,
12 defendant remained willfully blind to the dangerousness of his own
13 conduct. Whether or not he knew he was communicating with an IO,
14 defendant knowingly violated his official duties by disclosing
15 controlled information to a person he knew was not authorized to
16 receive it. In short, defendant's claim that he was unknowingly
17 victimized is specious and is further demonstrative of why the Court
18 cannot trust defendant's word that he no longer poses a danger and
19 will appear as required.

20 Second, the weight of the evidence weighs in favor of detention.
21 As outlined in the indictment, the government identified many
22 documents defendant passed to the IO in violation of his official
23 duties and defendant admitted to his conduct in a Mirandized
24 statement. Given that the evidence here is strong and a criminal
25 conviction and prison sentence are likely, defendant has a strong
26 incentive not to appear.

27 Third, although defendant has no significant criminal history,
28 his personal characteristics make him unsuitable for pretrial release

1 because defendant has the means, incentive, and reckless disposition
2 to flee. Defendant has significant contacts in the PRC. In addition
3 to the IO, defendant has family members living in China, including a
4 family member whose identity he impersonated to receive the bribe
5 payments from the IO. (Id. at 126-27.) At one of the two homes
6 defendant is offering as part of his bond package, his parents rent
7 out space to friends from their village in the PRC. (Hrg. Tr. at 5.)
8 When defendant was arrested, he had \$20,000 in cash and had recently
9 searched for one-way flights to Taipei for August 7, 2023. (August 3,
10 2023 USPO Report at 4-5.) Defendant researched that flight after
11 suspecting that law enforcement had searched his phone. (Intv. Tr. at
12 103-04.) And according to the USN, defendant and his wife had
13 requested leave, beginning on August 8, 2023, to travel to Wisconsin,
14 not overseas. (USPO Report at 4-5.) Whether defendant actually
15 purchased a flight to Wisconsin or the money came from family
16 members, defendant has easy access to cash and the means to flee.
17 Taken in tandem, these facts demonstrate by a preponderance of
18 evidence that defendant is at risk of not appearing and that if he
19 flees, he is unlikely to come back. Moreover, pretrial release
20 depends on the Court putting its trust in defendant and in defendant
21 taking seriously that trust. As Judge Donahue observed, defendant
22 adopted a "cavalier" attitude towards his military oath, trading on
23 it for just a few thousand dollars. Thus, defendant's characteristics
24 weigh in favor of detention.

25 Finally, it is difficult to overstate the seriousness of the
26 danger it would pose if defendant continued anything approximating
27 the conduct for which he is charged. Therefore, defendant's motion
28 should be denied, and he should remain detained pending trial.

DECLARATION OF KATHRYNNE N. SEIDEN

I, Kathrynne N. Seiden, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I am one of the attorneys assigned to represent the government in this case.

2. On August 8, 2023, the Honorable Patricia Donahue held a detention hearing in this case. (Dkts. 14-15.) Attached as **Exhibit A** is a transcript of the detention hearing. (Dkt. 30.)

3. On August 2, 2023, law enforcement officers interviewed Wenheng Zhao, the defendant in this case. Attached as **Exhibit B** is a draft transcript of the interview.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on September 22, 2023.

/s/ Kathrynne N. Seiden
Kathrynne N. Seiden

Exhibit A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

UNITED STATES OF AMERICA,)	CASE NO: 2:23-cr-00372-RGK-1
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Los Angeles, California
)	
WENHENG ZHAO,)	Tuesday, August 8, 2023
)	
Defendant.)	(10:34 a.m. to 11:54 a.m.)

DETENTION HEARING

BEFORE THE HONORABLE PATRICIA DONAHUE,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: AUSA KATHRYNNE SEIDEN
U.S. Attorney's Office
312 N. Spring Street, 12th Floor
Los Angeles, CA 90012

For Defendant: AFD RICHARD D. GOLDMAN
Federal Public Defender's Office
321 East 2nd Street
Los Angeles, CA 90012

Deputy Clerk: Alma Felix

Court Reporter: Recorded; CourtSmart

Courtroom Deputy: Isabel Martinez

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Los Angeles, California; Tuesday, August 8, 2023; 10:34 a.m.

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THE CLERK: Calling Case Number CR-23-372-RGK, *United States of America versus Wenheng Zhao*.

Beginning with Plaintiff's counsel, please state your appearance for the record.

MS. SEIDEN: Good morning, Your Honor. Kathrynne Seiden on behalf of the United States.

MR. GOLDMAN: Good morning, Your Honor. Richard Goldman on behalf of Wenheng Zhao who's present before the Court in custody.

Your Honor, before we proceed, may I ask the Court to have the marshals uncuff Mr. Zhao for this proceeding?

THE COURT: Let me ask what the marshal's position is on that.

THE MARSHAL: It can be done, Your Honor.

THE COURT: Is that acceptable to the marshals?

THE MARSHAL: Yes, Your Honor, if you order it.

THE COURT: All right. Yes then go ahead. Thank you.

(Pause; Defendant uncuffed)

THE CLERK: Please be seated.

(Pause)

THE COURT: We're here this morning for the Detention Hearing which was continued to today at the request of the

1 Defense.

2 I have received and reviewed, obviously, the Original
3 Pretrial Services Report, dated August 3rd, and I've also
4 received and reviewed the Updated Report, dated today,
5 August 8 of 2023. And I have also just received and have not
6 yet read what appear to be three pages of a transcript of an
7 interview that I understand the Government is proffering in
8 support of the request for detention.

9 Counsel, is that correct?

10 **MS. SEIDEN:** Yes, Your Honor. I believe it was a
11 four-page excerpt from the interview transcript.

12 **THE COURT:** Oh, you're right. I have pages 124
13 through 127.

14 All right. And the Government is proffering this
15 transcript in support of the detention request; is that
16 correct?

17 **MS. SEIDEN:** Yes, Your Honor.

18 **THE COURT:** Has it been provided to Defense Counsel?

19 **MS. SEIDEN:** Yes, Your Honor.

20 **THE COURT:** All right. Mr. Goldman, have you had an
21 opportunity to review this transcript that the Government is
22 proffering?

23 **MR. GOLDMAN:** I have, Your Honor.

24 **THE COURT:** All right. And does the Defense accept
25 the proffer?

1 **MR. GOLDMAN:** We do, just perhaps not the argument
2 that's following the proffer.

3 **THE COURT:** Right, of course. All right. Then I
4 will hear argument first from the Government.

5 Let me just be clear.

6 The Government is proffering the indictment, the
7 Initial Pretrial Services Report and Recommendation, the
8 Updated Pretrial Services Report and the transcript that was
9 submitted to the Court this morning. Is that correct?

10 **MS. SEIDEN:** Correct, Your Honor, but of course not
11 the Pretrial Services' recommendation.

12 **THE COURT:** All right. And is the Government
13 proffering anything else in support of the detention request?

14 **MS. SEIDEN:** No, Your Honor.

15 **THE COURT:** All right. Then I'll hear agreement.

16 **MS. SEIDEN:** May I take the lectern, Your Honor?

17 **THE COURT:** Yes.

18 **MS. SEIDEN:** Thank you, Your Honor.

19 There are no conditions or combination of conditions
20 that will reasonably assure Defendant's appearance; or more
21 importantly, the public's safety in this case.

22 As to flight risk, Your Honor, these are serious
23 charges with serious sentencing exposure.

24 Defendant admitted in a mirandized post-arrest
25 interview that he accepted money in exchange for sending

1 information related to our national defense. So there is a
2 very significant chance that he is looking at prison time and
3 that gives him, as the Court knows, a very significant
4 incentive not to appear.

5 He also has the means to flee, Your Honor.

6 He has serious ties to the PRC. He has been
7 maintaining an active relationship with a Chinese intelligence
8 officer for the last two years.

9 He has family members in the PRC. His parents are
10 currently renting out space in the home that he owns, just
11 blocks from where he would presumably be living, to friends and
12 people from their village in the PRC which is what they relayed
13 to the IRS in their interview.

14 During Defendant's post-arrest interview, he
15 explained that he used a Chinese identification belonging to
16 his cousin to set up a payment platform account, and that is
17 what's contained in the transcript excerpt Your Honor has. So
18 that's not only indicative of his international ties but also
19 signifies, in addition to the charged conduct, another level of
20 deception that would make it difficult to monitor him on
21 Pretrial release.

22 He also has additional means to flee.

23 He had \$20,000 in cash in the van in which he lives
24 on base when that van was searched incident to his arrest.
25 Obviously, that cash has been seized but his longstanding

1 relationship with a powerful and sophisticated contact in the
2 PRC suggests that there is more where that came from.

3 Further, during a search of his phone following his
4 arrest, law enforcement found a search for a one-way flight
5 from Los Angeles International to Taipei on August 7th, 2023.
6 And both Defendant and his wife requested leave from the
7 military, beginning on August 8th to go to Wisconsin, not
8 Taipei.

9 So I understand, Your Honor, that this is a very
10 significant bond package that is being offered and that it is a
11 rare case where I would stand here and argue that that is not
12 sufficient to allay the concerns but I think this is that rare
13 case.

14 The house here is not sufficient. His parents live
15 there and pay him rent but it is his own home. It's not his
16 parents' home; it's not a home owned by his children or by
17 close friends, it's his, as is the other home that he is
18 receiving income from that he is not reporting.

19 He's already demonstrated that he's willing to sell
20 out his country for \$14,000, which suggests a level of
21 recklessness, and that concern is just not sufficiently allayed
22 by a stake in his house, his property.

23 And finally, Your Honor, successful Pretrial
24 supervision depends on his ability and desire to comply with
25 Pretrial Services and with the Court and with the Court's

1 ability to trust him. This Defendant swore an oath to faithful
2 discharge his duty as a member of the United States Navy. He
3 knew his duties. He had security clearance up to the secret
4 level and he violated all of that for \$14,000. His conduct
5 makes clear that he is not someone who can be put in a position
6 of trust by this Court. He had no respect whatsoever for his
7 position and he's not going to respect the Court or faithfully
8 comply with the conditions of Pretrial release. So all of that
9 goes to the risk of nonappearance, Your Honor.

10 As to danger, which is frankly not mentioned in any
11 depth in Pretrial Services' recommendation which discusses his
12 substance abuse, but that of course is not the concern here.
13 Even if his properties could alleviate the concerns about the
14 risk of nonappearance, they cannot do so for danger here.

15 The conduct underpinning the charges involves
16 Defendant sending sensitive military information to an
17 intelligence officer from the PRC.

18 In exchange for money, he surreptitiously recorded
19 and then transmitted military information, photographs and
20 videos.

21 He sent the IO nonpublic and controlled operation
22 plans for United States military exercises in the Indo-Pacific,
23 detailing specific locations and timing of naval force
24 movements, amphibious landings and maritime operations.

25 He photographed electrical diagrams for our radar

1 systems stationed on a U.S. military base in Okinawa, Japan.

2 He obtained and transmitted details about the navy's
3 operational security at the naval base in Ventura County and on
4 San Clemente Island, including photographs and videos.

5 In short, he took numerous actions which jeopardized
6 the national security of the United States. So obviously the
7 Court should not punish him for that conduct at this stage, but
8 the seriousness and the dangerousness of that conduct
9 underscores the danger he poses if he is permitted the
10 opportunity to carry on that conduct. We can take documents
11 out of his hands, Your Honor, and we can restrict his access to
12 new information, but by virtue of his tenure with the United
13 States Navy and the clearance status that he held, he has
14 additional information in his head that we cannot take out of
15 there, we cannot restrict his access to.

16 Moreover, he's experienced in surreptitious methods
17 of communication. He used encrypted messages to communicate
18 with this intelligence officer, and it would be very difficult
19 for this court, through Pretrial Services, to supervise his
20 communications and ensure that no additional harm is occurring.
21 So we're not just talking about danger to the Central District
22 of California or risk to the local community, we're talking
23 about danger to our national security, Your Honor, and there is
24 clear and convincing evidence that this Defendant poses such a
25 danger. And that danger is serious enough and grave enough

1 that it is not -- cannot and should not hinge on a house in
2 Monterrey Park.

3 Thank you, Your Honor.

4 **THE COURT:** Counsel, I have just a couple of
5 questions.

6 The Defendant is charged in an indictment with a
7 conspiracy and receiving a bribe by a public official; along,
8 obviously, with forfeiture allegations.

9 What are the maximum penalties for those violations?

10 **MS. SEIDEN:** I believe it's 20 years, Your Honor.

11 **THE COURT:** All right. And then the Pretrial
12 Services Report, dated August 3rd, states the NCIS agent
13 reported:

14 "The Defendant admitted to sending information to a
15 foreign intelligence officer because it was,
16 (quote/unquote,) 'easy money'."

17 Is that contained in the part of the transcript that
18 was submitted this morning, or is that a different interview?

19 **MS. SEIDEN:** No, Your Honor, it's the same interview.
20 I just added the portion of the interview transcript to
21 supplement facts that were relayed to Pretrial Services but did
22 not make it into the report that I think are important for the
23 Court to know and consider.

24 **THE COURT:** All right. All right, thank you. Those
25 are my questions for now.

1 **MS. SEIDEN:** Thank you.

2 **THE COURT:** All right. I'll hear from the Defense.

3 **MR. GOLDMAN:** Thank you, Your Honor.

4 Your Honor, I think at the outset it's important to
5 know what Mr. Zhao is charged with and what he is not charged
6 with.

7 He's not charged in this indictment with espionage.
8 He is charged with bribery ,which is a far different charge
9 than espionage. And so one of the questions that the Court
10 asked the Government was, "What is the maximum charge that
11 Mr. Zhao faces?" The Government answered correctly. The
12 maximum charge for the 371 conspiracy is five years. The
13 maximum charge for the bribery is 15 years.

14 But what the Court didn't ask and what the Government
15 didn't provide is, what is the guideline calculation based on
16 an analysis of the facts in this case? And I did a guideline
17 calculation, Your Honor, and I'm going to hand a copy to the
18 prosecution just of the specific sentencing, U.S. Sentencing
19 Guideline provision. I'd like to hand that up to the Court.
20 And I'd like to inform the Court that the guidelines are as
21 follows in this case:

22 Looking at the calculation of the guidelines in the
23 most punitive way against Mr. Zhao, if he's convicted, the
24 Offense Level is 18, Mr. Zhao has a Criminal History
25 Category of 1 -- meaning he has no prior criminal record at all

1 -- and the Guideline Calculation is 27 to 33 months.

2 If this case would result in him going to trial and
3 being found guilty, that is the guideline range, not 15 years
4 in prison, not 20 years in prison, but a guideline range of 27
5 to 33 months.

6 If this case resolves in a different manner and there
7 was acceptance of responsibility in this case, there's a
8 three-level reduction, as the Court knows, and now the
9 Guideline Range is 18 to 24 months. So the picture painted by
10 the prosecution with respect to what Mr. Zhao is facing was not
11 a complete picture. Not a complete picture at all. And as
12 Your Honor knows, this is not a case involving a mandatory
13 minimum penalty at all.

14 And so the next thing that I want to discuss with the
15 Court deals with the Bail Reform Act and the prosecution's
16 request for detention.

17 As Your Honor knows, this is a case that does not
18 involve any of the enumerated crimes that invokes a rebuttable
19 presumption whereby we have the burden to show by clear and
20 convincing evidence that he's neither a risk of flight nor a
21 threat to the community. The burden's upon the Government to
22 show by clear and convincing evidence that he cannot be given
23 bond conditions that will reasonably assure his appearance and
24 cannot be given bond conditions that would reasonably assure
25 the safety of the community. And so I think it's important,

1 Your Honor, to look at what the Bail Reform Act says.

2 The Bail Reform Act under 18, United States Code,
3 3142(f) says that a Defendant accused of a crime shall be
4 released either on personal recognizance or on an unsecured
5 appearance bond. And it is only after the Court makes a
6 determination, based on the prosecution's burden, that those
7 conditions of release -- an unsecured appearance bond or a
8 personal recognizance bond -- will not reasonably assure his
9 appearance in court, then the Court can move to additional
10 conditions.

11 Now, there are 14 conditions that are listed and they
12 increase in order of severity. It is only until the 11th
13 condition is released, whereby the Court can demand that
14 sureties be posted in the form of money, in the form of
15 property. So those become the more restrictive conditions.
16 But prior to the 11th condition listed in 3142, the Court is
17 essentially told by the Bail Reform Act that it should look for
18 the least restrictive condition that reasonably assures
19 Mr. Zhao's appearance.

20 Now, as I previously mentioned, we know that he has
21 no prior criminal record.

22 We know that there is no substance abuse issue. When
23 the prosecution spoke about a substance abuse issue, I believe
24 that the first Pretrial Services Report indicated he drank
25 alcohol once a month. Somehow I don't view that as a substance

1 abuse issue and so I'm not really sure where the prosecutor was
2 going with the argument that there were substance abuse issues.

3 As I said, Your Honor, the Bail Reform Act indicates
4 that the first thing the Court needs to look at is, can
5 Mr. Zhao be released on personal recognizance or on an
6 unsecured bond?

7 The prosecutor brought up allegations contained in
8 the indictment and I wanted to discuss some of those
9 allegations.

10 Does Your Honor have a copy of the indictment in
11 front of you?

12 **THE COURT:** I do and I've read it.

13 **MR. GOLDMAN:** Thank you, Your Honor.

14 One of the things that the indictment does not allege
15 is that Mr. Zhao knew that the person he was dealing with was
16 an agent of the People's Republic of China. There's a complete
17 absence of that allegation. And in fact, if Your Honor looks
18 at Overt Act Number 5, which is found on page 7, beginning on
19 line 20, there is an indication, based on the prosecution's
20 allegation, that Mr. Zhao thinks he's dealing with someone with
21 respect to investment declarations. That is what the
22 prosecution says in its -- in its indictment against Mr. Zhao,
23 not anywhere in here that Mr. Zhao knew that the person,
24 unnamed Coconspirator A, was an agent of the People's Republic
25 of China.

1 With respect to photographs that were taken -- and
2 specifically, Your Honor, what I want to refer to is Overt Act
3 Number 9, which is found on page 8, line 8.

4 There's no indication in the prosecution's allegation
5 that these photographs were transmitted to Coconspirator A. It
6 merely states that photographs were taken. Now, I don't know
7 if they were taken in connection with Mr. Zhao's job as a CB.
8 I don't know if they were sent to Coconspirator A. But that is
9 absent in the prosecution's allegation in Overt Act Number 9.

10 One of the things that I think it's important for the
11 Court to consider has to do with the analysis of Overt Acts
12 1 through 5 when they are talking about -- "they," meaning the
13 Government -- is talking about a largescale military exercise.
14 And frankly it's a global exercise. What the prosecution's
15 talking about is exercises in the Indo-Pacific region. Your
16 Honor, that information was available on a United States Navy
17 website, accessible by the public, during the time of the
18 exercise happening. Accessible. I looked at it yesterday. I
19 went on Google, I punched in "largescale exercise, August
20 2021," and up popped a plethora of information from the United
21 States Navy. So this is no secret. This is information that
22 is readily available.

23 I took the opportunity, Your Honor, to compile
24 exhibits. And if I may hand those up to the Court -- with
25 respect to what is readily available on the website.

1 Your Honor, essentially, if I may proceed, Exhibit 1
2 is essentially a Table of Contents of the various articles that
3 are listed on the U.S. Naval website and then it continues.
4 Exhibit 2: "U.S. Navy kicks off largescale exercise, 2021."
5 And the following articles are all articles around that time
6 period that are readily available to the public. So the idea
7 that somehow this information is supersecret is contradicted by
8 the availability of the U.S. Navy's own website detailing all
9 of these different activities in connection with a largescale
10 exercise.

11 **THE COURT:** Mr. Goldman, obviously I haven't read all
12 of the -- appears to be 11 exhibits in the binder that you just
13 handed me -- but the Overt Act Number 1 in the indictment
14 states that:

15 "Coconspirator A asked for the specific plan and
16 details regarding the locations and timing of U.S.
17 Naval Force movements and information about various
18 military topics; such as, among other things,
19 amphibious landing, distributed maritime operations
20 and logistic support."

21 Is the Defense proffering that all of this
22 information, which is listed in Overt Act Number 1, is
23 contained in these exhibits?

24 **MR. GOLDMAN:** Your Honor, obviously as the Court
25 knows, this matter first came on for an initial appearance on

1 August the 3rd.

2 **THE COURT:** Right.

3 **MR. GOLDMAN:** That was when the Court handed down
4 Judge Klausner's standing discovery order for the Government to
5 provide discovery within a two-week period of time. I haven't
6 gotten discovery yet, that's something I'm sure that the
7 Government's going to provide. So I can't tell the Court what
8 the specifics are because I don't have the discovery.

9 What I can tell the Court is that if you look at the
10 titles of these articles, these are fairly specific articles
11 about information about these largescale exercises. Can I say
12 to the Court that there was additional information provided by
13 Mr. Zhao? I don't know. But what I can say is that during the
14 dates of these exercises, and before they commenced, all this
15 stuff is available on the U.S. Navy website. Other than that,
16 I can't really opine further, Your Honor.

17 I think it's important, Your Honor, to consider who
18 is before this Court in determining whether the prosecution has
19 proven by clear and convincing evidence that Mr. Zhao is a risk
20 of flight and a threat to the community.

21 He has been in the United States since 2009. He is a
22 United States citizen. He does not hold dual citizenship with
23 the People's Republic of China.

24 His parents, who are in the courtroom, his father is
25 in the back. His father is also a citizen of the United States

1 of America.

2 His mother, who is present, she has a green card.
3 The green card was just renewed last year. It is good for
4 another nine years.

5 His wife is present in the courtroom. His wife also
6 works for the navy. His wife is a naturalized U.S. citizen.

7 In addition, Your Honor, the Court has information in
8 the Pretrial Services Report regarding Mr. Zhao's cousin, Phang
9 Yu (phonetic), who is an honorably discharged naval veteran who
10 just finished nursing school who lives in Dallas, who came here
11 in her cousin's time of need to give assistance to him, and has
12 also said that she would act as a surety. So clearly there are
13 strong ties to the community.

14 In addition to his mother, his father, his wife, his
15 cousin, he also has two brothers who were born in this country,
16 who are United States citizens. Does Mr. Zhao have family in
17 China? Well yes, he was born there. But I'm not sure the fact
18 of having family in China from a country that you were born in,
19 somehow allows us to reach the conclusion that he's a risk of
20 flight.

21 His passport was seized. And actually there were two
22 passports. One passport was a military passport that allowed
23 him to travel in connection with the military. The second
24 passport is a United States passport. Both of those passports
25 were seized. He filed a passport declaration at his initial

1 appearance stating that he would not seek to get a passport.

2 So he's here and he's not going back.

3 Now, the prosecutor said, well Mr. Zhao looked into
4 the idea of a one-way ticket to Taiwan, to Taipei. One, he
5 didn't buy a ticket to Taipei. Two, the last time I checked,
6 Taiwan is not an ally of the People's Republic of China.
7 Taiwan is an ally of the United States. So if somehow Mr. Zhao
8 flees the country and goes to Taiwan, I don't think that
9 there's an issue with him being extradited from Taiwan. So I
10 think that is a red herring because there's no indication that
11 he made steps to flee, other than to look at a ticket. So I'd
12 ask the Court to discount the prosecution's conclusion that
13 that indicates that he's a risk of flight.

14 In terms of the information that the prosecution says
15 Mr. Zhao gave, as I pointed out, in the Overt Act Number 5 --
16 excuse me -- in Overt Act Number 9 regarding photographs,
17 there's no indication that those photographs were ever sent.
18 And again, Your Honor, this information that we are talking
19 about is the lowest level of information. And so I'm not
20 really sure how we can conclude that he presents a risk to the
21 United States if he's released from custody.

22 The Pretrial Services Report indicates that were the
23 Court to release him, he is to rejoin the navy. Perhaps not in
24 the same position that he was in before, but the initial
25 preservice -- Preservices [sic] reports says he will come back

1 to the navy in a different position. And I don't know what
2 that means but obviously they have said he's coming back to the
3 navy and there's a place for him.

4 So based upon his ties to the community, based upon
5 his family agreeing to post property; and his wife, his cousin,
6 his father, they're all United States citizens. They're not
7 going back to China. They are here saying, we will stand
8 behind Mr. Zhao, we will sign unjustified surety bonds, we will
9 post property, we will do what we have to do. I think that in
10 light of the fact that what he's charged with is not a
11 mandatory minimum offense, is not an enumerated offense under
12 any of the enumerated defenses listed in the Bail Reform Act.
13 The fact that the guideline range in this case is so low, I
14 think that there are conditions to be fashioned that will
15 reasonably assure his appearance. And I would ask this Court
16 to follow the recommendation of Pretrial Services.

17 And based on that I'd submit, Your Honor. And if the
18 Court has any other questions, I'm happy to respond.

19 **THE COURT:** I do have questions.

20 You mentioned that search on his phone. The search
21 showed -- revealed an image of a search indicating a one-way
22 flight to Taipei for August 7, which was yesterday so shortly
23 around the time that he was arrested. And he apparently was
24 residing in a Sprinter van and had \$20,000 in cash in a grocery
25 bag. And had submitted to the navy, by a leave request, to go

1 not to Taiwan but to Wisconsin. Those facts on their face,
2 suggest that he planned to leave the district.

3 **MR. GOLDMAN:** So let me address the issue with
4 respect to the Sprinter van.

5 Obviously the Court knows there are two homes.
6 They're --

7 **THE COURT:** Yes.

8 **MR. GOLDMAN:** -- They're both in Monterrey Park. He
9 and his wife live on base in the Sprinter van. That way he is
10 there, he can go to his duties, he doesn't have to travel from
11 Monterrey Park to -- to Port Hueneme in order to complete his
12 duties in connection with the navy.

13 With respect to the money in this case, Your Honor,
14 you know, people have different ways of dealing with money. I
15 have no idea where this money is from. The Government has made
16 an allegation that he has received less than \$15,000 in this
17 case, and no more than that, Your Honor, so I don't know if
18 that money was connected with monies he received for what he
19 might believe to be information related to investment.

20 And the reason I say that -- again, I want to
21 underscore Overt Act Number 5, specifically lines 20 through
22 24, involving investment decisions.

23 There is nothing in the prosecution's indictment
24 which indicates that Mr. Zhao knew that the person he was
25 dealing with was a representative of the People's Republic of

1 China.

2 In terms of the search on his phone of a flight to
3 Taiwan, there's no indication that he bought a ticket. There
4 is an indication that he made a search and nothing more than
5 that. And again, Your Honor, I think the Court's concerns can
6 be allayed by the fact that you have United States citizens who
7 are willing to act as sureties, there is property that can be
8 posted.

9 One of the things that I didn't address that the
10 prosecution brought up was this interview with the agent
11 talking about WeChat and using his cousin's identification in
12 order to get money or goods or to buy goods from China and
13 apparently you have to have Chinese citizenship. If you read
14 the entire -- the entire interview, you have to have Chinese
15 citizenship in order to have WeChat.

16 And if the Court will look on page 127, at the bottom
17 of 127, beginning on line 19, for the reason why Mr. Zhao would
18 use his cousin's WeChat, it's right there, because we order --
19 we order stuff from AliExpress. I don't know if you've heard
20 about it. It's like eBay but it's in China. And with
21 AliExpress, you can't pay with WeChat, we have to use Alipay.
22 So -- so you transfer from the WeChat account and then it ends.
23 But that's the reason that he has given the agent in this case,
24 not for some nefarious purpose. For an entrepreneurial
25 purpose, we want to order goods from China and be able to sell

1 those goods in the United States from an Internet vendor.

2 So again, when the prosecution brought this up, I
3 read the whole transcript and I thought, well, here's
4 Mr. Zhao's reason why he would want to use ID belonging to his
5 cousin because he can't order products because he doesn't have
6 Chinese citizenship.

7 Your Honor, have I addressed all of the Court's
8 questions or are there more?

9 **THE COURT:** Can you clarify which property the
10 Defense is offering to support the bond? The Pretrial Services
11 Report lists the property at West Emerson, which appears to be
12 owned by the Defendant's parents.

13 **MR. GOLDMAN:** So Your Honor --

14 **THE COURT:** But there's also a property on North
15 Chandler as to which the Defendant states he is the sole owner.

16 **MR. GOLDMAN:** Mr. Zhao -- both of these properties
17 are in Mr. Zhao's name. One property is owned free and clear.
18 I believe --

19 May I have a moment, Your Honor?

20 **THE COURT:** Certainly.

21 **(Pause)**

22 **MR. GOLDMAN:** Your Honor, one home is owned and paid
23 in full by Mr. Zhao. The other home is --

24 **THE COURT:** That's the North Chandler home.

25 **MR. GOLDMAN:** I believe so.

1 **THE COURT:** The one that's owned and paid in full,
2 right?

3 **MR. GOLDMAN:** And the other home is owned jointly
4 with Mr. -- Mr. Henders -- excuse me -- Mr. Zhao and his wife.
5 So they own that home jointly. And either of those homes could
6 be used, could be deposited in the court registry.

7 Your Honor, I wanted to come back to the issue with
8 respect to the trip that the prosecution brought up in terms of
9 the search to a flight to Taipei. In fact, Your Honor, I
10 believe that he and his wife both purchased tickets for a
11 flight to Wisconsin. His wife's mother lives in Wisconsin. So
12 I think those were purchased for that.

13 So what the prosecution is attempting to do is say,
14 Judge Donahue, because Mr. Zhao looked up a flight to Taipei,
15 therefore it indicates that he is a flight risk; when in fact,
16 all he did was look it up; when in fact, tickets were purchased
17 by Mr. Zhao and his wife -- or for Mr. Zhao and his wife to go
18 to Wisconsin to see her mother.

19 **THE COURT:** Yes. According to the Pretrial Services
20 Report, he -- the search was for a flight to Taipei,
21 specifically for August 7.

22 **MR. GOLDMAN:** Okay.

23 **THE COURT:** All right. All right. And with regard
24 to the properties, did I hear you say that either property is
25 offered in support of the bond? Is that correct?

1 **MR. GOLDMAN:** Whatever property the Court thinks is
2 appropriate.

3 **THE COURT:** Okay. All right. That's all my
4 questions for now. Thank you, Mr. Goldman.

5 **MR. GOLDMAN:** Thank you, Your Honor.

6 **THE COURT:** All right. I'll hear response from the
7 Government.

8 **MS. SEIDEN:** Thank you, Your Honor.

9 First of all, Mr. Goldman mentioned the guideline
10 calculations and the fact that this is just a bribery case. I
11 think as the Court knows, this is not a run-of-the-mill bribery
12 case. This is not somebody accepting payment in exchange for a
13 violation of duties in the sense that we typically see in these
14 cases. This is an exchange, again, for national defense
15 information. And that guideline calculation which we just
16 heard does not account for the specific underlying conduct, any
17 adjustments, any specific offense characteristics that may come
18 into play. And even assuming that that guideline calculation
19 is the correct calculation and there are no other factors that
20 are coming into play, several years in prison is still an
21 incentive for somebody to not appear, Your Honor.

22 Further, Mr. Goldman mentioned my point about
23 substance abuse which I fear I may have miscommunicated. My
24 point was not that -- to imply that Defendant has a substance
25 abuse issue, it was that the only mention of danger in Pretrial

1 Services' recommendation is about the fact that Defendant does
2 not have any substance abuse issues. And the Government's
3 point is that substance abuse really isn't at the crux of what
4 makes this Defendant dangerous, it is the access to and
5 knowledge of the navy operations, and national defense
6 information, and his willingness to turn that over blindly.

7 Beyond that, Your Honor, there are additional
8 components of Defendant's interview transcript that I have not
9 provided to Defense Counsel because I did not know that he
10 would raise the point he just did. (inaudible) I'm happy to
11 provide to Defense Counsel and the Court if the Court is not
12 inclined to allow an attorney proffer as to what they said.

13 But in that interview, the Defendant specifically
14 said that he knew that the IO resided in China. He knew that
15 it was suspicious, and that he had been trained to detect these
16 kinds of contacts. And I'm happy to provide those excerpts to
17 Defense Counsel and the Court if the Court would like to see
18 them.

19 So Mr. Goldman is correct that there are not
20 allegations in the indictment that Defendant knew this was an
21 IO, but there are allegations and there are facts by virtue of
22 Defendant's own admissions in his mirandized statement, that he
23 absolutely knew that this was suspicious and that he was
24 providing defense information to someone residing in the PRC.

25 **THE COURT:** Counsel, if you have those portions of

1 the transcript available, and copies obviously for Counsel and
2 the Court, can you please provide them?

3 **MS. SEIDEN:** Yes, Your Honor. I don't have physical
4 copies but I can make excerpts and email them to the Court and
5 to Defense Counsel.

6 **THE COURT:** All right.

7 **MS. SEIDEN:** If the Court would like me to do that.

8 **THE COURT:** All right. I -- well, I'll let you
9 finish your argument and then I'm going to hear from
10 Mr. Goldman.

11 So the portions that you just referenced have not
12 been produced to Mr. Goldman. Is that correct?

13 **MS. SEIDEN:** They have not, Your Honor, and there are
14 in response to the argument that was just made which is why
15 they were not provided earlier.

16 Beyond that, Your Honor, I'm not sure how Defendant
17 can argue that the information that was passed was readily
18 available to the public. As the Court and Mr. Goldman pointed
19 out, Defendant has not seen the documents yet that were
20 provided to the IO. And beyond that, what he overlooked is
21 that the documents passed here were all marked CIU which means
22 that they were not something that was publicly available or
23 free to be passed.

24 He also passed operational orders, that's Overt Act 6
25 which were not publicly available, Your Honor. And he also

1 took photographs of blueprints and electrical systems for a
2 radar system, and Mr. Goldman failed to mention that those were
3 also not publicly available.

4 And beyond that, Your Honor, in Overt Act 13, we see
5 that he was directed to send information that was marked "CUI"
6 or higher. And so this is not an instance of Defendant going
7 online and Googling things or sending things that have no
8 significance whatsoever. He was specifically being tasked with
9 selecting documents that had a certain level of security around
10 them. And he sent 16 files after that and that is Overt Act
11 16, I believe, Your Honor, and those too are not contained in
12 that binder that we were just provided -- or I suspect they
13 weren't. I have not had a time to fully look through the
14 binder.

15 Mr. Goldman also said that we shouldn't assume that
16 Defendant is a flight risk because he has family in the PRC and
17 I absolutely agree with that, Your Honor. Standing alone,
18 somebody having family overseas of course does not make them a
19 flight risk but having family in the PRC, having a
20 sophisticated IO contact in the PRC in conjunction with all of
21 the factors that the Court has already mentioned and the
22 charged conduct here, absolutely does make somebody a flight
23 risk.

24 As to the tickets, Your Honor, I don't know whether
25 it is true or not that Defendant and his wife had actually

1 purchased tickets to go to Wisconsin. That is the first I've
2 heard of it but what is true is that he was for whatever
3 reason, looking up one-way tickets to Taipei. And whether or
4 not that is an ally of the United States, the point is that it
5 is overseas, it is not consistent with what he represented to
6 the military about his leave. And as the Court pointed out,
7 it's very concerning in conjunction with \$20,000 in a grocery
8 bag in his van. And I think it underscores, Your Honor, that
9 even if we take his passport, even if we impose conditions to
10 hope that he doesn't flee, if he does flee, we're not getting
11 him back.

12 I think that's -- those are all the points I wanted
13 to hit, Your Honor, so I can make those excerpts for the Court
14 and for Defense Counsel if you would like me to.

15 **THE COURT:** Yes, please.

16 **MS. SEIDEN:** Thank you.

17 **THE COURT:** All right. The Government is going to
18 make those excerpts and I'd like you to provide those to
19 Mr. Goldman. I'd like to give Mr. Goldman an opportunity to
20 review them and to make any argument with regard to those
21 excerpts that he would like, as well as respond to anything
22 else that the Government has just stated.

23 **MR. GOLDMAN:** Your Honor, if I just may speak with
24 respect to the excerpts.

25 As the Court knows, there are times when you do not

1 have the full interview and things can be taken out of context.
2 It's like I explained to the Court in terms of this interview
3 that Mr. Zhao gave regarding using his cousin's ID so they
4 could order products from AliExpress. If I hadn't seen that, I
5 wouldn't have been able to point out to the Court that that was
6 the basis for using his cousin's ID. So frankly, Your Honor,
7 unless I have the entire transcript of the interview, I can't
8 really speak -- I can't speak to the interview in its totality
9 and so I'm concerned about that.

10 Certainly, the Government knew that we had a hearing
11 today. Certainly the Government had an opportunity to provide
12 me with this information ahead of time.

13 And so I would ask this Court to fashion conditions
14 of release for Mr. Zhao so that he can be out of custody. I
15 think that there are adequate sureties. I think that there is
16 no indication that he's going to flee, and so I'd ask this
17 Court to grant him bond.

18 **THE COURT:** Well Mr. Goldman, the Government has
19 proffered some additional information regarding the interview
20 that goes directly to one of your arguments. And so I think in
21 -- I would like to give you the opportunity to review that
22 portion of the excerpt -- or that excerpt, I should say.

23 Let me ask the Government. Is it feasible to just
24 provide the entire transcript at this point to the Defense?

25 **MS. SEIDEN:** Your Honor, it's feasible to show it to

1 Defense. Without a protective order in place, I feel concerned
2 about providing the entire 130-page transcript over at this
3 moment, without having the opportunity to comb it to make sure
4 that there is nothing in it that would be sensitive, which I
5 believe there is.

6 **THE COURT:** All right. But absent having the Defense
7 having an opportunity to review the excerpts and the context, I
8 am going to interpret that as the Defense rejecting that
9 proffer. So I'm not going to consider that in making this
10 decision.

11 If the Government's position is that the Court should
12 consider it, then the Government needs to provide the excerpts
13 with sufficient context so that Mr. Goldman has the opportunity
14 to fairly review them and respond.

15 **MS. SEIDEN:** I understand, Your Honor, and that's why
16 the Government provided four pages of the last transcript
17 excerpt when it was really relying on about two lines so that
18 he had that opportunity. So I'm happy to provide a few pages
19 on either end of the very narrow points for which I would be
20 proffering it, which is simply that Defendant knew that this
21 contact resided in the PRC and that he had received training on
22 these topics and that he believed that the contact was
23 suspicious. So those are the three narrow points and I'm happy
24 to provide sufficient pages on either end. And again, this is
25 if this is information that the Court believes is relevant to

1 its determination ---

2 **THE COURT:** It is relevant. All right. I'll have
3 you go ahead and provide that.

4 **MS. SEIDEN:** Thank you.

5 **MR. GOLDMAN:** And Your Honor, again, I don't hear any
6 indication from the Government that Mr. Zhao knew that this
7 contact was an agent of the People's Republic of China.
8 There's nothing in the indictment; and frankly, I haven't heard
9 anything that the Government has said regarding Mr. Zhao's
10 knowledge, other than it seemed suspicious. But there's
11 nothing to indicate that he knew who he was dealing with was an
12 agent of the PRC and I think that's important for the Court to
13 consider.

14 **THE COURT:** All right. I'm going to give the
15 Government a moment to transmit it and for you to take a look
16 at the transcripts.

17 (Pause)

18 And counsel, you'll also need to submit those to the
19 Court.

20 **MS. SEIDEN:** Of course, Your Honor.

21 (Pause)

22 **THE COURT:** All right. And Counsel, when you provide
23 those to my courtroom deputy, she has graciously agreed to
24 print those.

25 **MS. SEIDEN:** Thank you very much.

1 (Pause in proceeding from 11:24:56 to 11:40:11)

2 THE COURT: All right. Counsel, the Court has
3 received pages 16, 17, 18, 31, 32 and 99 and 100 of the
4 transcript of the Defendant's mirandized interview with law
5 enforcement.

6 Is that the entire set of materials that the
7 Government intends to submit?

8 MS. SEIDEN: Yes, thank you, Your Honor.

9 THE COURT: All right. Mr. Goldman, did you receive
10 those pages?

11 MR. GOLDMAN: I did, Your Honor, and I've read them.

12 THE COURT: All right. I'll hear any further
13 argument that you have pertaining to those pages or anything
14 else that's been mentioned.

15 MR. GOLDMAN: Thank you, Your Honor.

16 Your Honor, I have read these pages; and frankly,
17 Your Honor, it asserts -- excuse me. The Government is
18 asserting that somehow Mr. Zhao knew that this guy was involved
19 with the People's Republic of China and that's not my
20 interpretation of it at all.

21 As I previously stated to the Court, Overt Act
22 Number 5 in the prosecution's indictment, talks about Mr. Zhao
23 being involved in investment decisions and he was providing
24 information to Conspirator A to inform investment decisions.
25 And when I read this transcript, it appears that that is

1 exactly what Mr. Zhao is talking about, that he's talking about
2 being involved in stocks and investing, and he thinks that this
3 gentleman who he is speaking to is also involved in investing.

4 And with respect to was it suspicious? He said,
5 "Well, I thought it was suspicious and I tried to cut off all
6 contacts with the guy." But there is nothing in this
7 transcript, nor in the indictment, that the prosecution has
8 alleged that Mr. Zhao knew he was giving information to an
9 agent of the People's Republic of China. And it supports my
10 contention that he thinks he's dealing with someone in the
11 investment industry.

12 But there's something else that I think is important
13 to point out to the Court.

14 In the initial Pretrial Services Report, on page 5,
15 the Pretrial Services officer speaks with the navy and it says:

16 "If released, the Defendant can report to work;
17 however, most of his access will be deactivated and
18 they will need to create another job for him."

19 So the navy's not saying this guy is a risk to the
20 navy, a risk to the country. They're saying, if the Court
21 releases him, he can go back to work. If he was such a danger,
22 Your Honor, the navy would say, under no circumstances can he
23 go back to work. So again, it supports my contention that he
24 does not indicate to be a threat to the community, a threat to
25 the navy, or a risk of flight.

1 And based on that, Your Honor, I would submit.

2 **THE COURT:** All right. Thank you, Counsel.

3 **MR. GOLDMAN:** And there's just one other thing --
4 actually there was one other thing.

5 There's a reason for Federal Rule of Evidence 106.
6 It's so that when the Government gives a document, they're not
7 cherry-picking things. There is a reason for the rule of
8 completeness so we get to see everything and we're not arguing
9 in a vacuum or arguing in things that the Government is cherry-
10 picking. And we don't have that entire statement. I'm not
11 sure why we're not entitled to Mr. Zhao's complete statement.
12 He's our client, he's my client. I should be entitled to his
13 entire statement.

14 So again, Your Honor, there's a reason for Rule 106
15 so that I'm not stuck addressing certain points when I don't
16 have an entire document in order to make an informed argument
17 and a complete argument.

18 **THE COURT:** All right. Mr. Goldman, I asked for the
19 portions of the transcript. Obviously Rule 106 is a rule of
20 evidence which doesn't apply in a detention hearing. And you
21 certainly are entitled, and I'm sure will receive in discovery,
22 the transcript of the entire interview.

23 The Government proffered portions of this and I asked
24 the Government to provide the excerpts to be sure that you had
25 in front of you those pages so that you could address it and I

1 think you have.

2 Is there anything further from the Government?

3 **MS. SEIDEN:** Very briefly, Your Honor.

4 I just want to be clear because of what Defense
5 Counsel just stated, that the Government's position with
6 respect to these excerpts is clear.

7 The Government is not offering these excerpts, as
8 Mr. Goldman just stated, to indicate or suggest to the Court or
9 state affirmatively the Government's position on whether
10 Defendant knew or did not know that this was an intelligence
11 officer. What the Government put forward these excerpts for is
12 exactly what I previously stated which is that he knew that
13 this was someone overseas, he knew it was suspicious, he felt
14 that it was suspicious, he had been trained on suspicious
15 context but he did it anyway and he did it because he was
16 getting paid. And in his own words, he was willing to do
17 whatever the IO said because he was getting paid. So that is
18 why the Government is putting forward these excerpts. In other
19 words, Your Honor, he knew better.

20 And as for the navy point, Your Honor, I had the same
21 reaction, candidly, to seeing that in the report and I did
22 speak with NCIS about it. And the reason that the navy would
23 require him to continue reporting, my understanding from NCIS
24 is as a means of keeping an eye on him, Your Honor, and as a
25 means of making sure that he is staying in line in the event

1 that he is released. But it is not the navy's position that he
2 does not pose a threat. His security clearance is in the
3 process of being revoked, as is his wife's, so that is not the
4 navy's position and I just wanted the Court to know that.

5 **THE COURT:** All right. Thank you, Counsel.

6 All right. Is there anything further from the
7 Defense?

8 **MR. GOLDMAN:** No, Your Honor.

9 **THE COURT:** All right. Thank you.

10 All right. Thank you counsel for the detailed and
11 fine arguments.

12 As I said, I've considered all of the -- I've
13 considered all of the arguments of counsel, all of the
14 information proffered by the Government, both Pretrial Services
15 Reports and Recommendations, as well as the indictment.

16 First, the Government has established that it is
17 entitled to a detention hearing under 18 USC Section 3142(f)
18 based on a serious risk of flight so ...

19 And secondly, counsel both make very fine arguments
20 weighing all of the factors. And obviously, the weight of the
21 allegations is the -- to be given the least -- the strength of
22 the allegations is to be given the least weight.

23 But based on the information that has been provided,
24 the Government has shown that the Defendant presents both a
25 significant risk of flight and a danger to the community. And

1 I find that there is no condition or combination of conditions
2 that will reasonably assure either his appearance or the safety
3 of the community.

4 And I have given great consideration to the
5 significant bond proposed by the Defense; however, the --
6 despite the support, financial and otherwise from his family,
7 which is amply evidenced in the Pretrial Services Report dated
8 today, based on the Defendant's admissions and the allegations
9 in the indictment, the Defendant felt the need to obtain money,
10 frequent payments over a course of an extensive period of time
11 between August of 2021 and May of 2023, from payments which the
12 most generous interpretation is that he was receiving the
13 payments from someone who he knew was located in the People's
14 Republic of China, someone who had instructed him to
15 surreptitiously gather information and at whose direction the
16 Defendant engaged, according to the allegations in the
17 indictment, in numerous activities that he clearly had been
18 trained not to engage in and knew not to engage in. And
19 apparently, based on receipt of money, decided to do it anyway.
20 Even if he thought it was someone who was investing, it was
21 behavior that was clearly in violation of the oath he took as
22 an officer in the United States Navy.

23 And given his cavalier disregard for that oath, based
24 on these allegations, the Court does not have confidence that
25 he would abide by conditions of release, even if those

1 conditions included a bond secured by property for which his
2 parents appear to have worked very hard to acquire and
3 maintain.

4 With regard to dangerousness to the community, there
5 is clearly no dangerousness based on substance abuse. That is
6 evident from the Pretrial Services Report. The danger is based
7 on the allegations set forth in the indictment. Even if the
8 Defendant did not know that the individual to whom he was
9 surreptitiously and continuously transmitting this information
10 was employed by or acquiring the information as part of the --
11 on behalf of the Government of the People's Republic of China,
12 the Defendant was nonetheless clearly willing to, based on
13 these allegations, violate his oath to the navy and send
14 significant information, at least based on the information in
15 the indictment, certainly not all of which appears to be public
16 and which appears to have been clearly labeled as not to be
17 disseminated to the public. That is endangers the national
18 security of the United States when someone with the U.S.
19 military violates that oath and engages in this conduct. And I
20 recognize that these are allegations but they are very serious
21 and detailed allegations.

22 So for all of these reasons and based on all of the
23 information provided, the Defendant is ordered detained, both
24 on grounds of flight risk and danger to the community pending
25 the trial in this matter.

1 And I believe the matter is already -- and we've
2 already had arraignment and it's before District Judge Klausner
3 so I don't believe that there are any further dates that need
4 to be set.

5 All right. Are there any questions from the
6 Government?

7 **MS. SEIDEN:** No, thank you, Your Honor.

8 **THE COURT:** All right. From the Defense?

9 **MR. GOLDMAN:** No, Your Honor.

10 **THE COURT:** All right. Thank you counsel.

11 **THE CLERK:** Court is adjourned.

12 **(Proceeding adjourned at 11:54 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



Signed

August 23, 2023

Dated

TONI HUDSON, TRANSCRIBER

Exhibit B

Filed Under Seal